

REMARKS

This paper is responsive to the Office Action mailed November 6, 2003. Claims 1-36, which are pending in the application, were rejected under 35 U.S.C. 103(a) as unpatentable over Giovannoli in view of Mandler and Popolo and a newly-cited reference to Odom. The Office Action was made non-final in view of the new grounds of rejection. Applicant respectfully traverses the rejection for the reasons discussed below. Claims 1, 15, 18, 29, and 32-36 have been amended. Reconsideration and allowance of the amended claims is respectfully requested.

Examiner Interview

Applicant's attorney thanks Examiner Akers for the time and consideration he extended in a telephone interview conducted January 26, 2004. In the interview, the Examiner and applicant's attorney discussed several features of the claimed invention that distinguish the invention over the prior art. While distinguishing features were noted over all of the cited references, the interview focused in great part on the reference to Popolo.

Specifically, Popolo is noted in the November 6, 2003 Office Action as allegedly teaching the claimed aspects of receiving metric data from a source and generating a normalized price data value (now identified in the claims as a "comparison value"). As discussed in the interview and explained in greater detail below, Popolo, in fact, does not generate a normalized price data value, or "comparison value," as claimed in the present application. Stated briefly, the claimed "comparison value" is a dynamic value that can vary according to changes in the received metric data. In contrast, Popolo's "normalization" is simply a static conversion of unit weight (e.g., from "pounds" to "hundredweight," or vice versa, which conversion process never changes). Applicant has amended Claims 1, 18, and 32 to further distinguish the comparison value as being indicative of a dynamic ratio of a quoted value and a metric value derived from

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

dynamic metric data. The Examiner agreed to reconsider the distinguishing features of the claimed invention in view of these amendments.

Provided below is a brief discussion of Popolo's disclosure, after which selected features of the claimed invention are discussed.

Popolo

Popolo teaches a system and method for matching sellers and buyers of spot metals. Popolo's system purportedly reduces the time and expense associated with selling prime and secondary steel that is no longer needed. In particular, sellers of steel are able to post detailed specifications of available steel, and buyers are able to browse and bid on part or all of a seller's posting. At column 9, lines 21-50 of the Popolo patent (cited by the Examiner), Popolo's system permits a seller to enter a numeric value for the asking price of an item and specify the unit of measure for that price. The example given by Popolo is "TOTAL WEIGHT: 23000.0000 pounds" for an "ASKING UNIT PRICE: 23.0877 \$/hundredweight." Popolo then states that the resulting "ASKING TOTAL VALUE" is simply calculated by multiplying the "TOTAL WEIGHT" by the "ASKING UNIT PRICE," after "normalizing" both values to a common unit of measure. The "normalization" provided by Popolo is simply a conversion of one unit of measure ("pounds") to another unit of measure ("hundredweight"). This conversion will *never change* because it relies on static factors inherent in international standards of weights and measures. As further explained below, this conversion of units by Popolo does *not* suggest generating a normalized price data value, or "comparison value," in the manner recited in the claims of the present application.

Claim 1 of the Present Application

Turning now to Claim 1, applicant claims a method for calculating price data. More specifically, Claim 1 recites a combination of elements that includes:

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

receiving at least one request for quote from said buyer agent, wherein said request for quote includes a product specification data set;

transmitting the product specification data set to at least one seller agent;

receiving a price data set from said seller agent, wherein the price data set contains at least one quoted value, and wherein information in said price data set is responsive to the product specification data set;

receiving dynamic metric data from at least one source, wherein the metric data represents price data that is indicative of one or more market prices;

generating at least one comparison value, wherein the comparison value is indicative of a dynamic ratio of the quoted value [1] and at least one metric value [2] derived from the dynamic metric data; and

communicating at least one comparison value to at least one output.

In one aspect of Claim 1, a price data set containing a quoted value is received from a seller agent. In another aspect of Claim 1, dynamic metric data is received from a source, wherein the metric data represents price data indicative of one or more market prices. The source of the metric data may be an industry specific reporting service such as Crowes™ or Random Lengths™ or the Chicago Mercantile Exchange lumber contract. Since market prices are subject to constant change, the metric data is dynamic (i.e., subject to change).

The "comparison value" in Claim 1 is indicative of a ratio of [1] the seller's quoted value, and [2] a metric value derived from the dynamic metric data. The resulting comparison value varies with changes in the metric data, even if the quoted value provided by the seller agent remains constant. As a result, the ratio of the quoted value and the metric value is *dynamic* and changes from time to time according to the market prices represented by the metric data. The method claimed in Claim 1 allows buyers to view a seller's quote in light of a reference point obtained from the metric data. Such metric data is variable in nature and is entirely independent of the price data set received from the seller.

Further understanding of this aspect of the invention can be gained from FIGURE 9 and the description in the specification on pages 16-18. The first paragraph of page 18 illustrates a specific example in which a resulting normalized price data value, or "comparison value," presents one value ("Eastern" price) as 97% (dynamic ratio) of another value ("Western" price).

The method claimed in Claim 1 uses combinations of data not suggested by any of the prior art. The prior art references cited in this application do not contemplate a method where a comparison value is calculated by types of data received from two different sources, (1) dynamic metric data received from a source, and (2) a price data set received from a seller.

Popolo's "normalizing" is really only a process of converting one unit of measure to another unit of measure. The conversion of pounds to hundredweight, or visa versa, as described by Popolo, is based on static factors inherent in international standards of weights and measures. In short, none of the cited references, including Popolo, teaches or suggests generating a comparison value that is "indicative of a *dynamic* ratio of the quoted value and at least one metric value derived from the *dynamic* metric data." (Emphasis supplied). Furthermore, none of the cited references suggest a method that calculates a comparison value using types of data received from two sources, "dynamic metric data from at least one source" and "price data set from said seller agent." Thus, for at least these reasons, Claim 1 is patentable over the cited art and in condition for allowance.

Claim 18 also contains novel aspects as described above. Thus, for the same reasons given above, Claim 18 is in condition for allowance.

Since Claims 2-17 and 19-31 depend from Claims 1 and 18, and Claims 32-36 have language that parallels the language of Claims 1 and 18, the analysis applied to Claims 1 and 18 also applies to these claims as well. Accordingly, applicant submits that Claims 2-17 and 19-36 are in condition for allowance.

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

Rejection of Claims 32-36 Under 35 U.S.C. § 101

The Office Action rejected Claims 32 and 36 under 35 U.S.C. § 101 for failing to provide a concrete, useful and tangible result. In the above-referenced telephone interview, the Examiner clarified to applicant's attorney that this rejection applies to Claims 32-36. Applicant respectfully traverses this rejection.

Amended Claim 32 is directed to an article of manufacture comprising a computer-readable medium having computer-executable instructions for providing services which, when executed by a processor, result in accomplishing a variety of useful actions with an output as stated in the claim. The result of carrying out these instructions by a processor is "generating an output of at least one comparison value for depiction on said buyer client computer."

Applicant urges consideration of the longstanding rule of the U.S. Patent and Trademark Office and the Federal courts, which accept computer-readable medium claims as patentable subject matter under 35 U.S.C. § 101. The well-known cases, *In re Beauregard* and *In re Lowry*, both affirm that computer-readable medium claims embodying a method are patentable subject matter. In view of these well-known cases, and the concrete, useful and tangible output produced by the computer-executable instructions, there should be no question as to the patentability of Claims 32-36. Applicant respectfully submits that the article of manufacture claimed in Claims 32-36 falls squarely within the boundaries of 35 U.S.C. § 101.

Rejection of Claims 1 and 18 Under 35 U.S.C. § 112

The Office Action rejected Claims 1 and 18 under 35 U.S.C. § 112. In view of the foregoing amendments and discussion, applicant submits that amended Claims 1 and 18 properly define methods of calculating a normalized price data value, or "comparison value," using the quoted value and the metric data, and satisfy the requirements of 35 U.S.C. § 112. Withdrawal of this rejection is requested.

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

Amendment of Claims 15 and 29

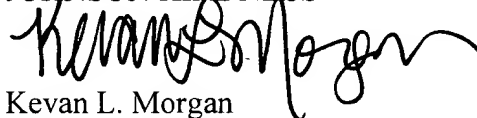
Applicant briefly notes that Claims 15 and 29 have been amended to correct a minor typographical error. Claims 15 and 29 are respectively dependent on Claims 14 and 28, each of which recite: "comparing said summed market price total by said price total, thereby creating at least one comparison value." Justification for the minor typographical correction from "adjusted" to "summed" market price total, as claimed, is readily apparent. Applicant further notes that this amendment does not narrow the scope of Claims 15 and 29, and thus these claims remain entitled to the range of equivalents originally contemplated.

CONCLUSION

In view of the foregoing amendments and remarks, applicant respectfully submits that Claims 1-36 in the present application are in condition for allowance. Reconsideration of the application and allowance of the claims at an early date is requested. Should any questions or concerns regarding this application remain, the Examiner is invited to contact applicant's attorney at the telephone number indicated below.

Respectfully submitted,

CHRISTENSEN O'CONNOR
JOHNSON KINDNESS^{PLLC}



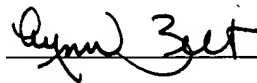
Kevan L. Morgan

Direct Dial No. 206.695.1712

E-Mail Address: kevan@cojk.com

I hereby certify that this correspondence is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid and addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the below date.

Date: February 17, 2004



KLM:lpz

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100